IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

O.J.APPEAL No 8 of 2000

in

COMPANY APPLICATIONNo 44 of 2000

with

CIVIL APPLICATION No 7 of 2000

with

Special Civil Application No.829 of 2000

For Approval and Signature:

Hon'ble CHIEF JUSTICE MR DM DHARMADHIKARI
and
Hon'ble MR.JUSTICE B.C.PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

BHAVNAGAR MUNICIPAL CORPN.

Versus

OFFICIAL LIQUIDATOR

Appearance:

1. O.J.APPEAL No. 8 of 2000

MR JR NANAVATI for Petitioner

OFFICIAL LIQUIDATOR for Respondent No. 1

MR SN SOPARKAR for Respondent No. 2

2. CIVIL APPLICATIONNo 7 of 2000

MR JR NANAVATI for Petitioner

OFFICIAL LIQUIDATOR for Respondent No. 1

MR SN SOPARKAR for Respondent No. 2

CORAM : CHIEF JUSTICE MR DM DHARMADHIKARI

and

MR.JUSTICE B.C.PATEL

Date of decision: 24/04/2000

CAV JUDGEMENT (Per D.M.Dharamadhikari, CJ)

This appeal has been preferred under Section 483 of the Indian Companies Act, 1956 by the Bhavnagar Municipal Corporation (shortly hereianfter referred to as the Corporation) against the order dated 16.2.2000 passed by the Learned Company Judge whereby he rejected the objection raised by the Corporation to the sale of the land by Public Auction of New Jehangir Vakil Mills (unit of Gujarat State Textile Corporation) through the Official Liquidator in the course of winding up proceedings of the company. Before this appeal came to be filed by the Corporation a Public Interest Litigation being Special Civil Application No. 829/2000 was filed and came up for hearing before the Court objecting to the sale/auction of the land of the company alleging that the authorities of the Municipal Corporation are acting in connivance with the auction purchasers in depriving the corporation of a valuable land. After the Public Interest Litigation (Special Civil Application No. 829 of 2000) came to be filed, the Corporation came up before this Court with this appeal under the provisions of the Companies Act. Since the common questions of facts and law arise, the present appeal and Special Civil Application No. 829/2000 preferred by the Ex-Corporation are being decided together by this order.

2. Learned Senior Counsel Shri J.R.Nanavati engaged for the Corporation and Shri Yogesh Ravani, appearing in the Public Interest Litigation brought by the Ex-Corporator have raised several objections to the sale by Public Auction of the land by the company. It is submitted that the lands and premises of the mill undoubtedly were granted by Ex-Ruler of erstwhile Bhavnagar State in the year 1918 by a lease deed but on formation of erstwhile State of Saurashra succeeded by

the present State of Gujarat, the rights of the erstwhile State and the present State came to be conferred upon the Municipal Corporation, Bhavnagar. This was a result of statutory covenants entered into between the erstwhile ruler and independent India and operation of the statutory provisions contained in Bombay Provincial Municipal Corporation Act, 1949 which is applicable to local bodies in the State of Gujarat. It is contended that the lease hold rights obtained by the company were neither assailable nor transferable without consent of the ruler and after him of the Corporation.

3. The other contentions advanced are that the period of lease granted to the company having expired its occupation on the land was unauthorised and it ws liable to be evicted under the Gujarat Public Premises (Eviction of uanuthorised occupants) Act, 1970. It is argued that without notice and proper opportunity of hearing to the Corporation, the Company Judge wrongly permitted the Official Liquidator to proceed with the auction proceedings for disposal of the land by observing that the said auction can be allowed as "as is where is and whatever basis". It is contended that since the land was held by the company in lease hold rights, notice to the lessor was mandatory. Reliance is placed on the judgement in the case of Smt.Jatan Golcha Vs. M/s. Golcha Properties P.Ltd. reported in AIR 1971 SC 374. The argument repeatedly advanced on behalf of the Corporation is that as the objection of the Corporation before the Company Judge was that the Company had no saleble right in the land, the Learned Judge could not have allowed the sale of land by public auction on "as is - where is and whatever basis". It is contended that he ought to have first determined the rights of the company as a lessee of the land to find out whether its rights in the land were transferrable or not. Reliance is placed on the judgement in the case of Smt. Nirmala & Bafna/Kershi Shivax Cambatta & Ors. Vs. Khandesh Spinning & Weaving Mills Co.Ltd. reported in AIR 1993 SC 1380, and in the case of Shree Chamundi Mopes Ltd. Vs. Church or South India Trust Assn & Ors reported in 1992 Vol 3. SCC Page 1 & in the case of Ravindra Ishwardas Shethna & Anr Vs. Official Liquidator, High Court Bombay & Anr reported in AIR 1983 SC 1061.

4. In reply, the Learned Counsel Shri S.N.Soparkar appearing for the successful auction purchaser and Mr.A.L.Shah, appearing for the Official Liquidator have pointed out by reading the impugned order of the Learned Company Judge that despite grant of opportunity to the Corporation, the Corporation failed to substantiate its

objections by filing necessary documents. It is submitted that it is no longer open to the Corporation to complain in this appeal that the Company Judge did not hear or granted opportunity to the Corporation on its objections to the sale of the land by auction. In reply, Learned Counsel also submitted that the Corporation has not produced the copy of the lease deed to show its terms to the Court. It is submitted that without production of the copy of the lease deed and other accompanying documents of title, merely on some entries in the Corporation reigsters and copy of the Kabulatnamas (which is shown to the Court), it is not possible to come to a conclusive finding that the lease period has expired and the Corporation has a right to resume the land. We do not discuss in detail about the period of lease whether permanent or for a specified period. However, even if for the sake of argument it is accepted as contended by the Corporation that the lease was for a period of 99 years and its period has not yet expired. The Company Judge committed no error in permitting sale of the land on "as is where is and whatever basis". It is contended that the Company Court under Section 446(2)(b) of the Companies Act had exclusive jurisdiction and power to decide any suit or claim by any party against the company in the course of winding up petition. It is submitted that the objection against public auction of the land preferred by the Corporation was rightly rejected by the Learned Company Judge as the Corporation failed to substantite its objection by producing necessary documents of title and the lease deed. Reliance is placed on the judgement reported in Shantilal Manganlal & Anr Vs. Chunilal Ranchoddas through legal representatives & Ors reported in AIR 1984 SC 1578 and in the case of Bhavnagar Municipality Vs. Union of India and another, reported in AIR 1990 SC 717.

5. The main question that falls for consideration before us in this appeal and the connected Public Interest Litigation is whether this Court should allow the Official Liquidator as ordered by the Learned Company Judge, to proceed with the auction of the land of the company in the course of winding up proceedings on "as is where is and whatever basis". The provisions of clause (b) of sub-section (2) of Section 446 of the Companies act confer exclusive jurisdiction on the Company Court dealing with the winding up of the company to adjudicate upon a claim or a suit referred against the company.

6. The Corporation merely raised an objection to the proposed sale by auction of the land of the company. It

did not prefer a claim in terms of sub-clause b of Sub-section 2 of Section 446 of the Companies Act. In the course of deciding the objection on behalf of the Corporation to the proposed sale by public auction, as has been recorded by the Learned Company Judge in his order itself, the Counsel of the Corporation was asked to specify his objections to the same whereupon on behalf of the Corporation, the learned counsel stated that only after it is served with a formal notice that it would raise claim against the Company. It would, at that stage substantiate its claim. In this appeal as well, Learned Counsel for the Corporation has prayed that this Court should set aside the order of the Learned Company Judge and remand the matter to him to afford opportunity to the Corporation to lodge its claim and substantiate it by evidence for adjudication of the claim by the Company Court in accordance with Section 446(2)(b) of the Companies Act.

7. We find great force in the submission made on behalf of the respondents that in the absence of original or copy of the lease deed and the other documents of title, the Learned Company Judge had no option but to over-rule the petition of the Corporation and allow the sale by public auction of the land by the company on "as is where is and whatever basis."

8. There is no material brought to our notice to come to a definite conclusion that the period of lease of the land has expired and the rights of the company as lessee of the land were neither assignable nor transferable under the terms of the lease. The decision of the Supreme Court in the case of Bhavnagar Municipality Vs. Union of India, Supra (AIR 1990 SC 717) has been referred and relied by both the Counsel appearing for the rival parties. In the said decision of the Supreme Court, the pre & post constitutional legal history with regard to the lands falling in Corporation limits of Bhavnagar has been traced. The same does not prima facie substantiate the objections of the Corporation that the title in the land came to be vested in it after the erstwhile State of Bhavnagar merged in the united states of Kathiawad and then in the State of Saurashtra succeeded by the State of Gujarat. We do not wish to go in any detail in the merits of the cliam of the Corporation to the land and the alleged status of a `lessor' because anything that we may observe herein might prejudice either of the parties. As we have observed above, the Corporation has yet to prefer a proper claim in terms of Section 446(2)(b) of the Company Act before the Learned Company Judge. As and when such a

claim is lodged and supported by the relevant documentary evidence, it would be open to the Company Judge to adjudicate the claim of the Corporation with regard to its alleged right to the land.

9. In our considered view, looking to the nature of the objection raised by the Corporation, which was not supported by relevant documents of title and registrars and entries of the Corporation, the Learned Company Judge committed no error in permitting the Official Liquidator to proceed with the auction proceedings of the land on "as is where is and whatever basis". Such a course adopted by the Learned Company Judge would cause no prejudice to the Corporation because the successful purchaser would get no title better than title which existed at the time of transfer, with the company.

10. We purposely avoid to go into the various decision cited by the Counsel for the parties in support of their rival submissions. We do not think it necessary to deal with them at this stage because it would otherwise prejudice adjudication of any claim preferred before the Company Judge in the winding up proceedings. For the aforesaid reasons, we dismiss this appeal as also Special Civil Application No. 829 of 2000. Rule discharged. No orders as to costs.

(D.M.Dharamadhikari, CJ)

(B.C.Patel, J)

Mr.J.R.Nanavati, Learned Counsel after pronouncement of the judgement made a request for going in appeal to the Supreme Court and for that purpose prayed for stay of the operation of the order for some definite period. We do not find any justification to pass any order of stay. Prayer is rejected.

(D.M.Dharamadhikari, CJ)

(B.C.Patel, J)

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